BOARD OF ENVIRONMENTAL PROTECTION Meeting Minutes

January 17, 2008

A meeting of the Board of Environmental Protection was held on Thursday, January 17, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer and Nancy Ziegler

Nancy Anderson arrived at approximately ~~ 9:45 a.m. Richard Gould arrived at approximately ~~ 9:20 a.m. Sue Lessard departed at approximately ~~ 10:00 a.m.

Absent: M. Wing Goodale and Matt Scott

Staff: Bureau of Land and Water Quality

Bureau of Land and Water Quality Bureau of Land and Water Quality Bureau of Land and Water Quality James Crowley
Dana Murch
Brian Kavanah
David Courtemanch

Others: David Littell, Commissioner

Cindy Bertocci, BEP Executive Analyst Peggy Bensinger, Assistant Attorney General Jerry Reid, Assistant Attorney General Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:30 p.m.)

I. DEPARTMENTAL

A. Commissioner's Comments: Commissioner Littell reported the following:

<u>Saco River</u>: Commissioner Littell provided Board members with a briefing memo from Dana Murch regarding the Saco River fishway agreement with FPL Energy.

<u>Liquefied Natural Gas (LNG)</u>: The Department met with the developers of a LNG facility to be located in Calais across the river from the Bayview Canada facility. Jim Dusch is currently collecting information on this project for a briefing of the Board as the Department anticipates receiving an application in the summer of 2008.

<u>Greenhouse Gas</u>: The California Low Emission Vehicle (LEV) waiver was denied by the Environmental Protection Agency. Maine has joined other states and will file a law suit in the 9th circuit district court in California.

Total Maximum Daily Load (TMDL) for Mercury: The US Environmental Protection Agency's (EPA) approval of the Regional Mercury TMDL report supports Maine's view that to meet our water quality standard for mercury without efforts to reduce mercury deposition is difficult. The EPA has now formally recognized Maine's case that significant deposition of mercury comes from out of state sources, but detail remains concerning the implementation.

Board member Nancy Ziegler asked for a briefing on the Mercury report Commissioner Littell stated that a briefing would be scheduled.

<u>Wind Power</u>: The Governor's Wind Power Task Force has conducted several all day meetings and recently focused on two workable permitting proposals. The first proposal would be a rezoning request to the Land Use Regulatory Commission (LURC) to identify two types of zones ~~ a green zone and a red zone. The green zone area would identify locations for possible wind power projects and the red zone would not allow for wind power projects in that area. Identification of suitable wide areas in advance of project proposals would maximize efficiency in the licensing process. Lastly, the Department would be the permitting authority with the Board maintaining its role in any challenges to the Commissioner's decision through the appeal process.

The Department made specific recommendations to the task force that studies should be conducted concerning noise, bird and bat habitat, and shadow flicker. No comments were received on the recommendation to the proposal and the Department expects the task force to consider this issue during their meeting next week.

Mars Hill wind power: Citizen complaints of noise from the Mars Hill wind power site resulted in a third party noise study. The preliminary report from the study indicated that the site was within the limits of its permit; however, it was recommended that additional studies be conducted ~ noting that noise can be propagated more effectively during the winter months because of snow and ice cover.

Board member Ernest Hilton asked if the Department made specific recommendations on the green/red areas. In a follow-up question Mr. Hilton asked if soils and slope were being considered by the task force with identifying suitable locations.

Commissioner Littell said the green/red areas were negotiated by the task force chair with environmental groups and wind developers. The DEP's major focus and recommendation pertained to the need for bird and bat studies. The requirement for these studies compliments the work of the Department and Inland Fisheries and Wildlife on the bird habitat issue and will aid the processing of applications with the inclusion of the early study information completed prior to filing.

Soils and slope are addressed under the Department's current regulations. Commissioner Littell noted that wind power issues concerning noise, bird / bat habitat and shadow flicker here differ from other projects // National Resource Council of the National Academy of Science conducted a study. That study confirmed the guidelines developed by Audubon and wind developers, but acknowledged data holes in forested mountainous environments as compared with prairie and desert environments.

<u>Safe Chemical Report</u>: The report contained two major components: Federal Toxics Substance Control Act comments concerning gaps in the regulatory regime; and

Practical steps to reduce toxic release in Maine such as the initiative to transition Maine State Government's vehicle fleet from lead to steel wheel weights. (Maine estimates that about 20,000 pounds of lead is released each year from wheel weights). The Department's public health coordinator working with the Dept. of Transportation is responsible for initiating the wheel weight project. Commissioner Littell noted that Bridgestone and other auto manufacturers are now phasing out lead weights. In addition to the lead wheel weight initiative, the Bureau of General Services is purchasing safer chemical cleaners. These examples support the effort outlined in the Governor's bill concerning chemical safety in consumer products. This bill, if passed, will result in rulemaking that would require disclosure by manufacturers of the use of high priority chemicals in products imported into Maine. The report on this matter can be found on the Department's web site at: http://www.maine.gov/dep/oc/safechem/saferchemfinrpt.htm

Board member Nancy Ziegler asked about the electronic waste recycling program. Commissioner Littell noted that the recycling program is working very well. The State of Connecticut has adopted Maine's program almost in its entirety and 4 other states are adopting Maine's product stewardship principles concept in somewhat similar programs. The Department will provide Board members with a copy of its report to Legislature concerning implementation of electronic waste system. One of the recommendations is to include two other electronic items (e.g. desk top printers, digital frames etc.)

Natural Resource Agency Consolidation: The Governor's initiative to consolidate the natural resource agencies involves the agencies that primarily manage resources. The DEP / BEP are largely regulatory in nature and therefore will remain as a separate agency in the Governor's budget. There exist some functions common to the resource management agencies to support the merger of four agencies into two.

Assistant Attorney General Bensinger asked if the Dept. of Inland Fisheries and Wildlife would be merged with the Department of Marine Resources and if the Dept. of Agriculture would merge with the Dept. of Conservation.

Commissioner Littell explained that it is not known which agencies will be consolidated and that many possible combinations are being considered.

Chair Plummer asked about the status of tidal power in the Downeast area – noting a study grant for the City of Eastport for tidal power

Commissioner Littell referred the question to Dana Murch. Mr. Murch explained that several companies (5 or 6) have been issued FERC study permits with several more pending. One of the permit holders (Ocean Renewables) currently has a 1/3 scale model proto-type mounted under a barge for research and development to test technology. If successful, a full scale proto-type will be built and installed for further testing (1 year to 18 months). The full scale model will require a DEP permit.

Chair Plummer asked about the length of time between the study permit stage and the full operational permit stage.

Mr. Murch indicated that tidal power is new and essentially where wind power was some 10 to 20 years ago in terms of environmental studies and technology development. The Department anticipates seeing pilot projects up and running within the next 2 to 3 years.

B. COMMENTS FROM THE BEP CHAIR: None C. EXECUTIVE ANALYST COMMENTS: NONE

D. BOARD CALENDAR: ReviewedE. DEPARTMENTAL ORDERS: NoneF. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (7-0-0-3) to approve consent agenda items number 1, 2, 3, 4, 5, 6, and 7 as presented.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Nancy Ziegler and Sue Lessard voted to support the motion. Board members Nancy Anderson, M. Wing Gould and Matt Scott were absent.

- 1. DARLING'S d/b/a DARLINGS AUTO MALL, Ellsworth Administrative Consent Agreement (BAQ)
- 2. ROWE FORD SALES, Westbrook Administrative Consent Agreement (BAQ)
- 3. KATAHDIN PAPER COMPANY, LLC, Millinocket Administrative Consent Agreement and Enforcement Order (BLWQ)
- 4. LONGCHAMPS & SONS, INC., Auburn Administrative Consent Agreement and Enforcement Order / NRPA (BLWQ)
- 5. DENNIS M. TRAFTON, JR, Lagrange Administrative Consent Agreement (BLWQ)
- 6. DAVID DARLING, Scarborough Administrative Consent Agreement and Enforcement Order // NRPA, E&S (BLWQ-Land)
- 7. J.C.N CONSTRUCTION COMPANY, INC, Baring Administrative Consent Agreement and Enforcement Order (BRWM)

Board voted (6-0-1-3) to approve consent agenda items number 1 and 2 as presented. Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board member Susan Lessard abstained. Board members Nancy Anderson, M. Wing Gould and Matt Scott were absent.

- 1. BEP MINUTES April 19, 2007 (approval)
- 2. BEP MINUTES October 4, 2007 (approval)

Board voted (7-0-0-3) to approve consent agenda items number 3 through 19 as presented.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Nancy Ziegler and Sue Lessard voted to support the motion. Board members Nancy Anderson, M. Wing Gould and Matt Scott were absent.

- 3. SODERBERG COMPANY, INC., Washburn Administrative Consent Agreement (BAQ)
- 4. LEE CHRYSLER JEEP, Auburn Administrative Consent Agreement and Enforcement Order (BAQ)
- 5. DICK BOURNIVAL DODGE, INC., York Administrative Consent Agreement (BAQ)
- 6. HAROLD PULSIFER, Portland Administrative Consent Agreement (BRWM)
- 7. MAINE MEDIA WORKSHOPS, Rockport Administrative Consent Agreement and Enforcement Order (BRWM)

- 8. TRACY GORDON, Avon Administrative Consent Agreement and Enforcement Order // NRPA, E&S, §413 (BLWQ Land)
- 9. ANISIA GIFFORD, Kennebunkport Administrative Consent Agreement and Enforcement Order // NRPA (BLWQ-Land)
- TOWN OF OLD ORCHARD BEACH, Old Orchard Beach Administrative Consent Agreement and Enforcement Order // NRPA (BLWQ-Land)
- 11. ROBERT JOHNSON, Beals Administrative Consent Agreement and Enforcement Order // NRPA (BLWQ-Land)
- 12. GEORGE BERRY, Phillips Administrative Consent Agreement and Enforcement Order // Performance Standards for Excavations (BLWQ-Land)
- 13. KIRK P. POND and ANDERSON LANDSCAPING, INC., Cape Elizabeth Administrative Consent Agreement // NRPA, (BLWQ-Land)
- 14. LEAVITT EARTHWORKS COMPANY, INC., Gorham Administrative Consent Agreement and Enforcement Order // Stormwater, E&S (BLWQ-land)
- 15. GEORGE C. HALL & SONS, INC., Windsor Administrative Consent Agreement and Enforcement Order // Performance Standards for Excavations (BLWQ-Land)
- 16. DAVID GREATON, Saco Administrative Consent Agreement and Enforcement Order // NRPA (BLWQ)
- 17. MAINE DRILLING & BLASTING, INC., Augusta Administrative Consent Agreement // Site (BLWQ-Land)
- 18. DWAYNE BOYNTON and PAUL PENTA, Bristol Administrative Consent Agreement // NRPA (BLWQ-Land)
- SAM SESSIONS, South Paris Administrative Consent Agreement // NRPA, E&S (BLWQ-Land)

III. Regular Agenda

1. <u>CHAPTER 528, PRETREATMENT PROGRAM / Amendments (adoption)</u>
James Crowley, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to adopt amendments to Chapter 528, Pretreatment Program as presented which incorporates modifications in 40 CFR Part 403 referred to as the "Pretreatment Streamlining Rule." These modifications provide for continuing state implementation of the Federal Clean Water Act. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B).

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Nancy Ziegler and Sue Lessard voted to support the motion. Board members Nancy Anderson, M. Wing Goodale and Matt Scott were absent.

III. Regular Agenda (continued)

2. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; and FPL Energy Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (motion to supplement record)

The Board voted (7-0-0-3) on a motion to deny the December 18, 2007 motion submitted by FPL Energy to supplement the record with exhibits 76 through 87, and the request by Verso to admit documents attached to its January 3, 2008 submission. The Board voted pursuant to 38 M.R.S.A. section 341-D(4) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board

3. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; and FPL Energy Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (Decision)

members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

Staff: Dana Murch, Bureau of Land and Water Quality
Brian Kavanah, Bureau of Land and Water Quality
David Courtemanch, Bureau of Land and Water Quality

Discussion of Verso Order:

The Board took a <u>straw</u> vote (6-1-0-3) on a motion to approve the draft proposed Board Order for Verso Paper with the modifications on page 063, 065 and 069 of the Board packet as detailed below.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board member Don Guimond voted opposed. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

Page 63 of the Board packet – page 8 of Verso Order // 4th paragraph as soon as practical, <u>and in any event before June 1, 2010,</u> final additional oxygen injection...

Page 65 of the Board packet – page 10 of Verso Order // 1st full paragraph
With respect to the finding that Verso requested BOD limits of 4,500 lbs/day and 8, 000 lbs / day, insert additional language in footnote #17 that acknowledges Verso is no longer making this request.

Page 69 of the Board packet – page 14 of the Verso Order // end of paragraph 4 include additional language

... with limited residential, commercial and agricultural land uses, the impacts of which merit further study.

Discussion of RPC Order:

The Board took a <u>straw</u> vote (7-0-0-3) on a motion to approve the draft proposed Board Order for Rumford Paper Company with the addition of reopener language in the condition pertaining to oxygenation injection requirements (with the same reopener to be included in the Verso and FPLE orders).

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

Reopener language: The Department reserves the right to reopen this certification if the parties are not able to reach agreement concerning access to the site to implement a second oxygen system and to modify or impose additional conditions as necessary.

Discussion of FPLE Order:

Following a discussion of the allocation of oxygenation responsibility between Upper and Lower Narrows, it was the sense of the Board that all of the orders should simply specify the overall oxygenation responsibility of each party (as opposed to specifying amounts at Upper and Lower Narrows) without reference to the Gulf Island Pond Oxygenation Project Partnership (GIPOP) agreement.

The Board took a <u>straw</u> vote (7-0-0-3) on a motion to approve the draft proposed Board Order for FPL Energy with the modifications noted below.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

Page 117 of the Board packet – page 7 of FPL Energy Order // first full paragraph ... __"To cause" means to serve as something that brings about an effect or a result. "To contribute" to means to play a significant part in bringing about a result. The evidence in the record indicates demonstrates that, were it not...

Page 129 of the Board packet – page 19 of FPL Energy Order // Condition 5 Gulf Island Pond Oxygenation:

- Specify FPLE's overall oxygenation responsibility as opposed to specifying amounts at Upper and Lower Narrows (and include similar language in RPC and Verso orders): For example, <u>FPLE is responsible for injecting 105,000 pounds</u> <u>per day at Upper Narrows or other equivalent amounts at other efficiencies at</u> other locations.
- Eliminate reference to Gulf Island Pond Oxygenation Project Partnership and substitute names of entities (include similar language in RPC and Verso orders):

 ...the applicant shall, independently or in cooperation with Verso, RPC, and Fraser, or their successors-in-interest...members of the Gulf Island Pond Oxygenation Project Partnership ...

Further Discussion of Reopener Provision:

Following a discussion of whether the reopener provision (see RPC discussion above) was a substantive change that would require additional opportunity for comment, the Board determined that the reopener provision discussed above would not be included in the orders.

Votes to Direct Staff to Revise Orders:

The Board voted (7-0-0-3) on a motion to direct Department staff to modify the order for Verso Paper as specified below and submit the revised order for consideration at the next regular meeting February 7, 2008. The Board voted pursuant to 38 M.R.S.A. Section 341-D(4), 06-096 CMR Chapter 30, Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

The Board voted (7-0-0-3) on a motion to direct Department staff to modify the order for Rumford Paper Company as specified below and submit the revised order for consideration at the next regular meeting February 7, 2008. The Board voted pursuant to 38 M.R.S.A. Section 341-D(4), 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

The Board voted (7-0-0-3) on a motion to direct Department staff to modify the order for FPL Energy as specified below and submit the revised order for consideration at the next regular meeting February 7, 2008. The Board voted pursuant to 38 M.R.S.A. Section 341-D(4), 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent.

Board Amendments to Draft Proposed Order for VERSO

Page 63 of the Board packet – page 8 of Verso Order // insert in 4th paragraph as soon as practical, and in any event before June 1, 2010, final additional oxygen injection...

Page 65 of the Board packet – page 10 of Verso Order // 1st paragraph
With respect to the finding that Verso requested BOD limits of 4,500 lbs/day and 8, 000 lbs / day, insert additional language in footnote #17 that acknowledges Verso is no longer making this request.

- Page 69 of the Board packet page 14 of the Verso Order // end of paragraph 4 include additional language
 - ... with limited residential, commercial and agricultural land uses, the impacts of which merit further study.

Page 82 of the Board packet, page 27 of the Verso Order // Special Conditions K and M

- Specify Verso's overall oxygenation responsibility as opposed to specifying amounts at Upper and Lower Narrows.
- Eliminate reference to Gulf Island Pond Oxygenation Project Partnership and substitute names of entities: ...the permittee shall, independently or in cooperation with RPC, FPL Energy, Fraser, or their successors-in-interest...

Board Amendments to Draft Proposed Order for Rumford Paper Company

Page 99 of the Board packet – page 7 of the RPC Order – insert in second paragraph ...as soon as practical, and in any event before June 1, 2010, final additional oxygen injection...

Page 107 of the Board packet – page 15 of the RPC Order // Special Conditions K and O

- Specify RPC's overall oxygenation responsibility as opposed to specifying amounts at Upper and Lower Narrows.
- Eliminate reference to Gulf Island Pond Oxygenation Project Partnership and substitute names of entities: ...the permittee shall, independently or in cooperation with Verso, FPL Energy, Fraser, or their successors-in-interest...

Board Amendments to Draft Proposed Order for FPL Energy

- Page 117of the packet page 7 of the FPL Energy Order // first full paragraph
 ______To cause__ means to serve as something that brings about an effect or a result. _____To contribute__ to means to play a significant part in bringing about a result. The evidence in the record indicates demonstrates that, were it not...
- Page 120 of the packet page 10 of the FPL Energy Order end of second paragraph ... with limited residential, commercial and agricultural land uses, the impacts of which merit further study.
- Page 124 of the packet page 14 of the FPL Energy Order insert in second paragraph as soon as practical, and in any event before June 1, 2010, final additional oxygen injection...

Page 129 of the Board packet – page 19 of the FPL Energy Order // Condition 5 Gulf Island Pond Oxygenation:

- Specify FPL Energy's overall oxygenation responsibility as opposed to specifying amounts at Upper and Lower Narrows.
- Eliminate reference to Gulf Island Pond Oxygenation Project Partnership and substitute names of entities: ...the applicant shall, independently or in cooperation with Verso, RPC, Fraser, or their successors-in-interest...

Next Regular Meeting - Thursday, February 7, 2008 - Holiday Inn / Ground Round